

No. 489139

IN THE COURT OF APPEALS DIVISION II  
OF THE STATE OF WASHINGTON

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STATE OF WASHINGTON, Respondent

v.

SOPHEAP CHITH, Appellant

---

APPEAL FROM THE SUPERIOR COURT  
OF PIERCE COUNTY  
THE HONORABLE KATHERINE STOLZ

---

BRIEF OF APPELLANT

---

Marie J. Trombley, WSBA 41410  
PO Box 829  
Graham, WA  
253-445-7920

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## I. ASSIGNMENTS OF ERROR

- A. The trial court erred when it did not dismiss with prejudice the possession of a stolen vehicle conviction.
- B. The trial court erred when it imposed a sentence outside the maximum statutory term for Count 1: a class B felony.
- C. The trial court erred when it imposed a sentence outside the maximum statutory term for Count 2: a class B felony.
- D. The trial court erred when it imposed a sentence outside the maximum statutory term for count 8: a class C felony.
- E. The trial court erred when it imposed a sentence outside the statutory maximum term for count 9: a Class B felony.
- F. The dates for prior criminal history in ¶ 2.2 of the judgment and sentence contain numerous scrivener's errors.
- G. If appellate costs become an issue in this appeal, this Court should exercise its discretion and decline to impose them given that Mr. Chith is indigent and has no current or future ability to pay them.

## ISSUES RELATING TO ASSIGNMENTS OF ERROR

- A. Did the trial court violate due process when it included a reference to a vacated conviction as dismissed without prejudice?
- B. Did the trial court err when it imposed a sentence 18 months in excess of the statutory maximum on Count 1?
- C. Did the trial court err when it imposed a sentence 14 months in excess of the statutory maximum on Count 2?
- D. Did the trial court err when it imposed a sentence 30 months in excess of the statutory maximum on Count 8?
- E. Did the trial court err when it imposed a sentence 12 months in excess of the statutory maximum on Count 9?
- F. Mr. Chith is entitled to a judgment and sentence free of scrivener's errors. His judgment and sentence contains errors as to date of sentence and date of crime at ¶ 2.2. Should this case be remanded to correct the judgment and sentence error?
- G. Under this Court's current approach to appellate costs, an objection to the costs must be made prior to a decision on the merits and before the prevailing party has been determined. In the event the State substantially prevails on appeal, should this

Court exercise its discretion in the decision terminating review  
and decline to impose appellate costs?

## II. STATEMENT OF FACTS

Pierce County prosecutors charged Sopheap Chith by amended information with (1) assault in the second degree, while armed with a firearm (2) drive by shooting (3) unlawful possession of a stolen vehicle while armed with a firearm (4) unlawful possession of a firearm second degree (5) reckless driving (6) duty in case of damage to attended vehicle or other property (7) driving while in suspended or revoked status in the third degree (8) violation of a no contact order while armed with a firearm (9) taking a motor vehicle without permission first degree while armed with a firearm and (10) intimidating a witness while armed with a firearm. (CP 1-6). He was found guilty by jury verdict. (CP 9; 22). On January 10, 2014, he was sentenced to 228 months of confinement with the sentence enhancements to run consecutive to each other and consecutive to the concurrently run underlying convictions. (CP 14). The trial court handwrote on the judgment and sentence ¶ 3.2:

The court dismisses without prejudice count III, the guilty verdict for unlawful possession of a stolen vehicle with a FASE, on double jeopardy grounds given the conviction for Count IX, T.M.V.W.O.P. 1<sup>st</sup> degree, FASE.

(CP 12).

Mr. Chith appealed and in an unpublished opinion, the Court overturned the conviction for intimidating a witness and remanded for resentencing. (CP 33-43).

Between the time of his sentencing in January and the issuance of the opinion by the Court of Appeals, Mr. Chith pleaded guilty to and was sentenced for 7 crimes in June 2014. (4/15/16 RP 15). The crimes occurred between May 28, 2011 and August 25, 2012. (CP 74).

At the remand hearing, the additional offender points from the June 2014 sentencing were added to provide an offender score of over 9. (CP 60-61; 71). The sentence and crime dates for the June 2014 sentencing were incorrectly listed. (CP 60; 75).

The new sentencing data of ¶ 2.3 provided an offender score of “9+” for each offense as follows:

Count 1: assault in the second degree: a Class B felony: The standard range was 63 to 84 months. The court imposed 84 months plus a 36 month firearm enhancement and added an 18 month community custody for a total of 138 months. (CP 59; 61; 63-64).

Count 2: Drive by shooting: a Class B felony: the standard range was 87 to 116 months. The court imposed 116 months plus 18 months of community custody for a total of 134 months. (CP 59; 61; 63-64).

Count 4: Unlawful possession of a firearm second degree: a Class C felony: with a standard range of 51 to 60 months. The court imposed 60 months. (CP 60-61; 63).

Count 8: Violation of a protective order: a Class C felony: the court imposed 60 months plus an 18 month firearm enhancement plus 12 months community custody for a total of 90 months. (CP 60-61; 63-64). The judgment and sentence incorrectly listed this conviction as a Class B felony with a maximum of 120 months. (CP 61).

Count 9: Taking a motor vehicle without permission: a class B felony: the standard range was 72 to 96 months. The court imposed 96 months plus a 36 month firearm enhancement for a total of 132 months. (CP 60-61; 63-64).

The total actual number of months of confinement including firearm enhancements was 206 months: the base sentences were set to run concurrently, but the firearm enhancements consecutive to the longest concurrent base sentence and to one another. (116 months plus 90 months). (CP 64).

The court handwrote on the judgment and sentence in ¶ 3.2:



The court dismisses without prejudice count III, the guilty verdict for unlawful possession of a stolen vehicle with a FASE, on double jeopardy grounds given the conviction for Count IX, T.M.V.W.O.P. 1<sup>st</sup> degree, FASE.  
(CP 62).

The court signed an order of indigency, authorizing Mr. Chith to seek review at public expense, including filing fees, attorney fees, cost of preparation of briefs, copying costs, and the verbatim report of proceedings necessary for review. Mr. Chith makes this timely appeal.  
(CP 99-100).

### III. ARGUMENT

#### A. The Court Violated Due Process In Dismissing Without Prejudice The Conviction For Possession Of A Stolen Vehicle.

“One cannot be both the principal thief and the receiver of stolen goods.” *State v. Hancock*, 44 Wn.App. 297, 301 721 P.2d 1006 (1986). Where the State charges taking of a motor vehicle without permission, and possession arising out of the same act, the fact finder must be instructed that if it finds the defendant committed the taking crime, it must stop and not reach the possession charge. *State v. Melick*, 131 Wn.App. 835, 841, 129 P.3d 816 (2006). This is so, because a person may not take from another and give possession to himself. *Id.* at 843. Where the acts of stealing and possessing the

stolen item are charged and a conviction results, the trial court should vacate the possession conviction before sentencing. *Id.* at 844.

Here, the jury must not have been properly instructed because it returned a guilty verdict for each charge. The trial court properly vacated the conviction for possession of a stolen motor vehicle before sentencing. However, the court should have vacated the conviction for possession with prejudice because the jury should not have considered it once it determined guilt on the taking charge. The proper remedy is remand with instructions to vacate and dismiss the possession charge with prejudice. *Melik*, 131 Wn.App. at 841.

B. The Trial Court Erred When It Sentenced Mr. Chith Outside  
The Statutory Maximum on Counts 1, 2, 8 and 9.

Sentencing errors may be raised for the first time on appeal. *State v. Anderson*, 58 Wn.App. 107, 110, 791 P.2d 547 (1990).

Under RCW 9.94A.505(5), “Except as [otherwise] provided a court may not impose a sentence providing for a term of confinement or community custody that exceeds the statutory maximum for the crimes as provided in chapter 9A.20 RCW.” The terms of community custody must be reduced by the court whenever the standard range term of confinement in combination with the terms of community

custody exceed the statutory maximum for the crime as provided in RCW 9A.20.021. RCW 9.94A.701(9).

RCW 9.94A.533(3)(g) provides:

If the standard sentence range under this section exceeds the statutory maximum sentence for the offense, the statutory maximum sentence shall be the presumptive sentence unless the offender is a persistent offender. If the addition of a firearm enhancement increases the sentence so that it would exceed the statutory maximum for the offense, the portion of the sentence representing the enhancement may not be reduced.

Under Washington statutes, a sentence, including enhancements and community custody, may not exceed the statutory maximum for the crime. If the total sentence exceeds the maximum sentence provided for in RCW 9A.20.021(1), then the underlying sentence, not the enhancement, must be reduced. *State v. DeSantiago*, 149 Wn.2d 402, 416, 68 P.3d 1065 (2003).

Here, with respect to count 1, assault in the second degree, the court sentenced Mr. Chith to 84 months as the base sentence. The firearm enhancement of 36 months brought the total to the statutory maximum of 120 months. RCW 9A.20.021(b). The court then added an additional 18 months of community custody, bringing the total period of confinement to 138 months. This is 18 months over the

statutory maximum for a class B felony. Because the total sentence of 138 months exceeds the maximum term of 10 years (120 months), the sentence violates RCW 9.94A505(5). The matter should be remanded for resentencing with instructions to decrease either the community custody or the base sentence. *State v. Zavala-Reynoso*, 127 Wn.App. 119, 124, 110 P.3d 827 (2005).

Similarly, in count 2: drive by shooting, the court imposed 116 months, the top of the standard range. The court also imposed an 18-month term of community custody, bringing the total to 134 months. This is 14 months over the statutory maximum sentence of 120 months for a Class B felony. The matter should be remanded to the trial court with instructions to decrease the base sentence.

Again, in count 8: violation of a protective order, the court imposed 60 months, the maximum term for a class C felony. (CP 61). The addition of the firearm enhancement of 18 months and 12 months of community custody exceed the maximum statutory sentence by 30 months. The matter should be remanded to the trial court with instructions to decrease the base sentence or the term of community custody.

In count 9: taking a motor vehicle without permission is a Class B felony and subject to a statutory maximum sentence of 10 years.

Here, the court imposed 96 months and 36 months for the firearm enhancement for a total of 132 months. This is 12 months beyond the maximum allowed. The matter should be remanded to the trial court with instructions to decrease the base sentence or the term of community custody to comply with the statutes.

C. The Judgment and Sentence Should Be Corrected To Amend The Scrivener's Errors.

Mr. Chith's judgment and sentence should be remanded to correct the scrivener's errors in ¶ 2.2 and 2.3. (CP 60-61).

In ¶ 2.2, the dates of the sentence for the crimes he was sentenced for on June 6, 2014, are listed as having been sentenced on October 14, 2013. This is incorrect and could create confusion in the future. (Appendix B).

In ¶ 2.3, Count 8, Violation of a Protective Order is listed as a Class B felony with a statutory maximum of 10 years. However, violation of a protective order, as charged under RCW 26.50.110(4) is a Class C felony. The statutory maximum is 5 years. RCW 9A.20.021(1).

This Court should remand to correct the errors. *State v. Naillieux*, 158 Wn.App. 630, 646, 241 P.3d 1280 (2010) (remand appropriate to correct the scrivener's error in judgment and sentence

erroneously stating the defendant stipulated to an exceptional sentence); *State v. Moten*, 95 Wn.App. 927, 929, 976 P.2d 1286 (1999) (remand appropriate to correct scrivener's errors referring to wrong statute on judgment and sentence form.)

D. This Court Should Exercise Its Discretion To Not Award  
Appellate Costs In The Event The State Substantially  
Prevails On Appeal And Submits A Cost Bill.

Under RCW 10.73.160 and RAP Title 14, this Court may order a criminal defendant to pay the costs of an unsuccessful appeal. A commissioner or clerk of the appellate court must award costs to the party that substantially prevails on review, unless the appellate court directs otherwise in its decision terminating review. RAP 14.2.

In *State v. Sinclair*, the Court of Appeals concluded that where the issue of appellate costs in a criminal case is raised in the appellant's brief or on a motion for reconsideration, it is appropriate for the reviewing Court to exercise its discretion and consider it. *State v. Sinclair*, 192 Wn.App. 380, 382, 367 P.3d 612 (2016). The *Sinclair* Court reasoned that exercising discretion meant inquiring into a defendant's ability or inability to pay appellate costs. *Sinclair*, 192 Wn.App. at 392. If a defendant is indigent and lacks the ability to pay,

an appellate court should deny an award of costs to the State.

*Sinclair*, 192 Wn.App. at 382.

The costs of appeal are added to the fees imposed by the trial court. The Washington Supreme Court recognized the widespread “problematic consequences” legal financial obligations (LFOs) inflict on indigent criminal defendants, which include an interest rate of 12 percent, court oversight until LFOs are paid, and long term court involvement, which inhibits re-entry into the community and increases the chance of recidivism. *State v. Blazina*, 182 Wn.2d 827, 836, 344 P.3d 680 (2016).

In *Sinclair*, the defendant was indigent, aged, and facing a lengthy prison sentence. The Court determined there was no realistic possibility he could pay appellate costs and denied award of those costs. *Sinclair*, 192 Wn.App. at 392. Here, Mr. Chith already owes over \$3,000 in legal fees at the trial court. (CP 62; 77). He is set to serve approximately 16 years of confinement. He was found indigent and entitled to appellate review at public expense. Under *Sinclair* and RAP 15.2(f), this Court should presume that he remains indigent.

A party and counsel for the party who has been granted an order of indigency must bring to the attention of the trial court any significant improvement during review in the financial condition of the party. The appellate court will give a party the

benefits of an order of indigency throughout the review unless the trial court finds the party's financial condition has improved to the extent that the party is no longer indigent.

There is little evidence that Mr. Chith will have the ability to repay additional appellate costs: no evidence has been presented to this Court and there is no finding by the trial court that his financial situation has improved or will improve in the future. Mr. Chith respectfully asks this Court to decline to impose any appellate costs the State may request.

#### IV. CONCLUSION

The facts and authorities in this case require a remand to the trial court with instructions to dismiss with prejudice count 3: per ¶ 3.2 and to correct the unauthorized imposition of sentences outside the statutory maximum, as well as correction of scrivener's errors.

Dated this 9<sup>th</sup> day of January 2017.

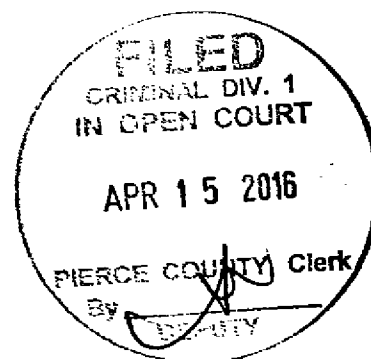
Respectfully Submitted,

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# APPENDIX A



## SUPERIOR COURT OF WASHINGTON FOR PIERCE COUNTY

STATE OF WASHINGTON,

Plaintiff,

CAUSE NO. 13-1-00554-1

**AS TO COUNT I, II, IV, VIII, IX ONLY**

vs.

SOPHEAP CHITH

Defendant.

SID: WA17525427

DOB: 05/23/80

**JUDGMENT AND SENTENCE (FJS)**

- ☒ Prison  
☐ RCW 9.94A.712/9.94A.507 Prison Confinement  
☐ Jail One Year or Less  
☐ First-Time Offender  
☐ Special Sexual Offender Sentencing Alternative  
☐ Special Drug Offender Sentencing Alternative  
☐ Alternative to Confinement (ATC)  
☐ Clerk's Action Required, para 4.5 (SDOSA), 4.7 and 4.8 (SSOSA) 4.15.2, 5.3, 5.6 and 5.8  
☐ Juvenile Decline ☐ Mandatory ☐ Discretionary

**I. HEARING**

- 1.1 A sentencing hearing was held and the defendant, the defendant's lawyer and the (deputy) prosecuting attorney were present.

**II. FINDINGS**

There being no reason why judgment should not be pronounced, the court FINDS:

- 2.1 **CURRENT OFFENSE(S):** The defendant was found guilty on 11.19.13  
by ☐ plea ☒ jury-verdict ☐ bench trial of:

COUNT	CRIME	RCW	ENHANCEMENT TYPE*	DATE OF CRIME	INCIDENT NO.
I	ASSAULT IN THE SECOND DEGREE (E28)	9A.36.021(1)(c) 9.41.010 9.94A.530 9.94A.533	FASE	02/05/13	PCSD 130360776
II	DRIVE-BY SHOOTING (E14A)	9A.36.045(1)	N/A	02/05/13	PCSD 130360776

**JUDGMENT AND SENTENCE (JS)**  
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COUNT	CRIME	RCW	ENHANCEMENT TYPE*	DATE OF CRIME	INCIDENT NO.
IV	UNLAWFUL POSSESSION OF A FIREARM IN THE SECOND DEGREE (GGG104)	9A.1010 9A.1040(2)(a)	N/A	02/05/13	PCSD 130360776
VIII	VIOLATION OF A PROTECTIVE ORDER (I47T)	26.50.110(4) 9A.1010 9.94A.530 9.94A.533	FASE	02/05/13	PCSD 130360776
IX	TAKING A MOTOR VEHICLE WITHOUT PERMISSION IN THE FIRST DEGREE (HHH10)	9A.56.020(1) 9A.56.070(1) 9A.1010 9.94A.533	FASE	02/05/13	PCSD 130360776

\* (F) Firearm, (D) Other deadly weapons, (V) VUCSA in a protected zone, (VH) Veh. Hom, See RCW 46.61.520, (JP) Juvenile present, (SM) Sexual Motivation, (SCF) Sexual Conduct with a Child for a Fee. See RCW 9.94A.533(8). (If the crime is a drug offense, include the type of drug in the second column.)

as charged in the AMENDED Information

- [X] A special verdict/finding for use of firearm was returned on Count(s) I, VIII, IX RCW 9.94A.602, 9.94A.533.
- [ ] Current offenses encompassing the same criminal conduct and counting as one crime in determining the offender score are (RCW 9.94A.589):
- [ ] Other current convictions listed under different cause numbers used in calculating the offender score are (list offense and cause number):

## 2.2 CRIMINAL HISTORY (RCW 9.94A.525):

	CRIME	DATE OF SENTENCE	SENTENCING COURT	DATE OF CRIME	A or J ADULT JUV	TYPE OF CRIME
1	THEFT 2	11/05/12	PIERCE, WA	09/25/12	A	NV
2	THEFT OF MV	10/14/13	PIERCE, WA	02/05/13	A	NV
3	THEFT OF MV	10/14/13	PIERCE, WA	02/05/13	A	NV
4	TMVWOP	10/14/13	PIERCE, WA	02/05/13	A	NV
5	THEFT OF MV	10/14/13	PIERCE, WA	02/05/13	A	NV
6	ATT THEFT OF MV	10/14/13	PIERCE, WA	02/05/13	A	NV
7	ATT THEFT OF MV	10/14/13	PIERCE, WA	02/05/13	A	NV
8	ATT THEFT OF MV	10/14/13	PIERCE, WA	02/05/13	A	NV
9	THEFT OF MV	10/14/13	PIERCE, WA	02/05/13	A	NV

- [ ] The court finds that the following prior convictions are one offense for purposes of determining the offender score (RCW 9.94A.525):

## 2.3 SENTENCING DATA:

COUNT NO.	OFFENDER SCORE	SERIOUSNESS LEVEL	STANDARD RANGE (not including enhancements)	PLUS ENHANCEMENTS	TOTAL STANDARD RANGE (including enhancements)	MAXIMUM TERM
I	9+	IV	63 TO 84 MONTHS	36 MONTHS	99 TO 120 MONTHS	10 YRS/ \$20,000
II	9+	VII	87 TO 116 MONTHS	N/A	87 TO 116 MONTHS	10 YRS/ \$20,000
IV	9+	III	51 TO 60 MONTHS	N/A	51 TO 60 MONTHS	5 YRS /\$10,000
VIII	9+	V	60 MONTHS	18 MONTHS	78 MONTHS	10 YRS/ \$20,000
IX	9+	V	72 TO 96 MONTHS	36 MONTHS	108 TO 132 MONTHS	10 YRS/ \$20,000

2.4 ☐ **EXCEPTIONAL SENTENCE.** Substantial and compelling reasons exist which justify an exceptional sentence:

☐ within ☐ below the standard range for Count(s) \_\_\_\_\_.

☐ above the standard range for Count(s) \_\_\_\_\_.

☐ The defendant and state stipulate that justice is best served by imposition of the exceptional sentence above the standard range and the court finds the exceptional sentence furthers and is consistent with the interests of justice and the purposes of the sentencing reform act.

☐ Aggravating factors were ☐ stipulated by the defendant, ☐ found by the court after the defendant waived jury trial, ☐ found by jury by special interrogatory.

Findings of fact and conclusions of law are attached in Appendix 2.4. ☐ Jury's special interrogatory is attached. The Prosecuting Attorney ☐ did ☐ did not recommend a similar sentence.

2.5 **ABILITY TO PAY LEGAL FINANCIAL OBLIGATIONS.** The court has considered the total amount owing, the defendant's past, present and future ability to pay legal financial obligations, including the defendant's financial resources and the likelihood that the defendant's status will change. The court finds that the defendant has the ability or likely future ability to pay the legal financial obligations imposed herein. RCW 9.94A.753.

☐ The following extraordinary circumstances exist that make restitution inappropriate (RCW 9.94A.753):

☐ The following extraordinary circumstances exist that make payment of nonmandatory legal financial obligations inappropriate:

2.6 ☐ **FELONY FIREARM OFFENDER REGISTRATION.** The defendant committed a felony firearm offense as defined in RCW 9A1.010.

☐ The court considered the following factors:

☐ the defendant's criminal history.

☐ whether the defendant has previously been found not guilty by reason of insanity of any offense in this state or elsewhere.

☐ evidence of the defendant's propensity for violence that would likely endanger persons.

☐ other: \_\_\_\_\_

JUDGMENT AND SENTENCE (JS)

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[ ] The court decided the defendant [ ] should [ ] should not register as a felony firearm offender.

### III. JUDGMENT

- 3.1 The defendant is GUILTY of the Counts and Charges listed in Paragraph 2.1.  
 3.2 [ ] The court DISMISSES Count III w/o prejudice jury verdict for Poss. Steal Vehicle w/FASE, on double jeopardy grounds  
given the conviction for Count IX, TMV WOP 1° w/FASE

### IV. SENTENCE AND ORDER

#### IT IS ORDERED:

4.1 Defendant shall pay to the Clerk of this Court: (Pierce County Clerk, 930 Tacoma Ave #110, Tacoma WA 98402)

#### JASS CODE

RTNRJN	\$ 944.06	Restitution to: <u>see restitution order filed March 28, 2014</u>
	\$	Restitution to: _____
		(Name and Address--address may be withheld and provided confidentially to Clerk's Office).
PCV	\$ 500.00	Crime Victim assessment
DNA	\$ 100.00	DNA Database Fee
PUB	\$	Court-Appointed Attorney Fees and Defense Costs
FRC	\$ 200.00	Criminal Filing Fee
FCM	\$	Fine

#### OTHER LEGAL FINANCIAL OBLIGATIONS (specify below)

\$ \_\_\_\_\_ Other Costs for: \_\_\_\_\_  
 \$ \_\_\_\_\_ Other Costs for: \_\_\_\_\_  
 \$ 1744.06 TOTAL

- [ ] The above total does not include all restitution which may be set by later order of the court. An agreed restitution order may be entered. RCW 9.94A.753. A restitution hearing:  
 [ ] shall be set by the prosecutor.  
 [ ] is scheduled for \_\_\_\_\_

**RESTITUTION.** Order ~~Attached~~ Filed March 28, 2014

- [ ] The Department of Corrections (DOC) or clerk of the court shall immediately issue a Notice of Payroll Deduction. RCW 9.94A.7602, RCW 9.94A.760(8).  
 [X] All payments shall be made in accordance with the policies of the clerk, commencing immediately, unless the court specifically sets forth the rate herein: Not less than \$ Per DOC per month commencing Per DOC. RCW 9.94.760. If the court does not set the rate herein, the defendant shall report to the clerk's office within 24 hours of the entry of the judgment and sentence to set up a payment plan.

The defendant shall report to the clerk of the court or as directed by the clerk of the court to provide financial and other information as requested. RCW 9.94A.760(7)(b)

- [ ] **COSTS OF INCARCERATION.** In addition to other costs imposed herein, the court finds that the defendant has or is likely to have the means to pay the costs of incarceration, and the defendant is ordered to pay such costs at the statutory rate. RCW 10.01.160.

#### JUDGMENT AND SENTENCE (JS)

(Felony) (7/2007) Page 4 of 11

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**COLLECTION COSTS** The defendant shall pay the costs of services to collect unpaid legal financial obligations per contract or statute. RCW 36.18.190, 9.94A.780 and 19.16.500.

**INTEREST** The financial obligations imposed in this judgment shall bear interest from the date of the judgment until payment in full, at the rate applicable to civil judgments. RCW 10.82.090

**COSTS ON APPEAL** An award of costs on appeal against the defendant may be added to the total legal financial obligations. RCW 10.73.160.

4.1b **ELECTRONIC MONITORING REIMBURSEMENT.** The defendant is ordered to reimburse \_\_\_\_\_ (name of electronic monitoring agency) at \_\_\_\_\_ for the cost of pretrial electronic monitoring in the amount of \$\_\_\_\_\_.

4.2 **[X] DNA TESTING.** The defendant shall have a blood/biological sample drawn for purposes of DNA identification analysis and the defendant shall fully cooperate in the testing. The appropriate agency, the county or DOC, shall be responsible for obtaining the sample prior to the defendant's release from confinement. RCW 43.43.754.

**[ ] HIV TESTING.** The Health Department or designee shall test and counsel the defendant for HIV as soon as possible and the defendant shall fully cooperate in the testing. RCW 70.24.340.

4.3 **NO CONTACT** Matthew Rapone 8.7.88  
The defendant shall not have contact with Gabriel Colburn 5.29.71 (name, DOB) including, but not limited to, personal, verbal, telephonic, written or contact through a third party for 10 years (not to exceed the maximum statutory sentence).

☒ Domestic Violence No-Contact Order, Antiharassment No-Contact Order, or Sexual Assault Protection Order is filed with this Judgment and Sentence. re Tiffany LaPlante

4.4 **OTHER:** Property may have been taken into custody in conjunction with this case. Property may be returned to the rightful owner. Any claim for return of such property must be made within 90 days. After 90 days, if you do not make a claim, property may be disposed of according to law.


4.4a Property may have been taken into custody in conjunction with this case. Property may be returned to the rightful owner. Any claim for return of such property must be made within 90 days unless forfeited by agreement in which case no claim may be made. After 90 days, if you do not make a claim, property may be disposed of according to law.

4.4b **BOND IS HEREBY EXONERATED**

4.5 **CONFINEMENT OVER ONE YEAR** The defendant is sentenced as follows:

(a) **CONFINEMENT.** RCW 9.94A.589. Defendant is sentenced to the following term of total confinement in the custody of the Department of Corrections (DOC):

<u>84</u> months on Count	<u>I</u>	<u>60</u> months on Count	<u>VIII</u>
<u>116</u> months on Count	<u>II</u>	<u>96</u> months on Count	<u>IX</u>
<u>60</u> months on Count	<u>IV</u>	_____ months on Count	_____

**JUDGMENT AND SENTENCE (JS)**

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A special finding/verdict having been entered as indicated in Section 2.1, the defendant is sentenced to the following additional term of total confinement in the custody of the Department of Corrections:

36 months on Count No I \_\_\_\_\_ months on Count No \_\_\_\_\_  
18 months on Count No VIII \_\_\_\_\_ months on Count No \_\_\_\_\_  
36 months on Count No IX \_\_\_\_\_ months on Count No \_\_\_\_\_

Sentence enhancements in Counts I, VIII and IX shall run  
☐ concurrent ☒ consecutive to each other.  
 Sentence enhancements in Counts I, VIII and IX shall be served  
☒ flat time ☐ subject to earned good time credit

Actual number of months of total confinement ordered is: 206 months  
 (Add mandatory firearm, deadly weapons, and sexual motivation enhancement time to run consecutively to other counts, see Section 2.3, Sentencing Data, above).

☐ The confinement time on Count(s) \_\_\_\_\_ contain(s) a mandatory minimum term of \_\_\_\_\_.  
**CONSECUTIVE/CONCURRENT SENTENCES.** RCW 9.94A.589. All counts shall be served concurrently, except for the portion of those counts for which there is a special finding of a firearm, other deadly weapon, sexual motivation, VUCSA in a protected zone, or manufacture of methamphetamine with juvenile present as set forth above at Section 2.3, and except for the following counts which shall be served consecutively: \_\_\_\_\_

The sentence herein shall run consecutively to all felony sentences in other cause numbers imposed prior to the commission of the crime(s) being sentenced. The sentence herein shall run concurrently with felony sentences in other cause numbers imposed after the commission of the crime(s) being sentenced except for the following cause numbers. RCW 9.94A.589: \_\_\_\_\_

Confinement shall commence immediately unless otherwise set forth here: \_\_\_\_\_

(c) The defendant shall receive credit for time served prior to sentencing if that confinement was solely under this cause number. RCW 9.94A.505. The time served shall be computed by the jail unless the credit for time served prior to sentencing is specifically set forth by the court: TBD by PCJ/DOJ

4.6 ☐ **COMMUNITY PLACEMENT** (pre 7/1/00 offenses) is ordered as follows:

Count \_\_\_\_\_ for \_\_\_\_\_ months;

Count \_\_\_\_\_ for \_\_\_\_\_ months;

Count \_\_\_\_\_ for \_\_\_\_\_ months;

☐ **COMMUNITY CUSTODY** (To determine which offenses are eligible for or required for community custody see RCW 9.94A.701)

The defendant shall be on community custody for:

Count(s) \_\_\_\_\_ 36 months for Serious Violent Offenses

Count(s) I and II 18 months for Violent Offenses

Count(s) VIII 12 months (for crimes against a person, drug offenses, or offenses involving the unlawful possession of a firearm by a

street gang member or associate)

Note: combined term of confinement and community custody for any particular offense cannot exceed the statutory maximum. RCW 9.94A.701.

(B) While on community placement or community custody, the defendant shall: (1) report to and be available for contact with the assigned community corrections officer as directed; (2) work at DOC-approved education, employment and/or community restitution (service); (3) notify DOC of any change in defendant's address or employment; (4) not consume controlled substances except pursuant to lawfully issued prescriptions; (5) not unlawfully possess controlled substances while in community custody; (6) not own, use, or possess firearms or ammunition; (7) pay supervision fees as determined by DOC; (8) perform affirmative acts as required by DOC to confirm compliance with the orders of the court; (9) abide by any additional conditions imposed by DOC under RCW 9.94A.704 and .706 and (10) for sex offenses, submit to electronic monitoring if imposed by DOC. The defendant's residence location and living arrangements are subject to the prior approval of DOC while in community placement or community custody. Community custody for sex offenders not sentenced under RCW 9.94A.712 may be extended for up to the statutory maximum term of the sentence. Violation of community custody imposed for a sex offense may result in additional confinement.

The court orders that during the period of supervision the defendant shall:

☐ consume no alcohol.

☒ have no contact with: see § 4.3

☒ remain ☒ within ☒ outside of a specified geographical boundary, to wit: per DOC

☐ not serve in any paid or volunteer capacity where he or she has control or supervision of minors under 13 years of age

☐ participate in the following crime-related treatment or counseling services: \_\_\_\_\_

☐ undergo an evaluation for treatment for ☐ domestic violence ☐ substance abuse

☐ mental health ☐ anger management and fully comply with all recommended treatment

☐ comply with the following crime-related prohibitions: \_\_\_\_\_

☐ Other conditions: \_\_\_\_\_

☐ For sentences imposed under RCW 9.94A.702, other conditions, including electronic monitoring, may be imposed during community custody by the Indeterminate Sentence Review Board, or in an emergency by DOC. Emergency conditions imposed by DOC shall not remain in effect longer than seven working days.

Court Ordered Treatment: If any court orders mental health or chemical dependency treatment, the defendant must notify DOC and the defendant must release treatment information to DOC for the duration of incarceration and supervision. RCW 9.94A.562.

PROVIDED: That under no circumstances shall the total term of confinement plus the term of community custody actually served exceed the statutory maximum for each offense

4.7 ☐ WORK ETHIC CAMP. RCW 9.94A.690, RCW 72.09.410. The court finds that the defendant is eligible and is likely to qualify for work ethic camp and the court recommends that the defendant serve the sentence at a work ethic camp. Upon completion of work ethic camp, the defendant shall be released on community custody for any remaining time of total confinement, subject to the conditions below. Violation of the conditions of community custody may result in a return to total confinement for the balance of the



defendant's remaining time of total confinement. The conditions of community custody are stated above in Section 4.6.

- 4.8 **OFF LIMITS ORDER** (known drug trafficker) RCW 10.66.020. The following areas are off limits to the defendant while under the supervision of the County Jail or Department of Corrections: \_\_\_\_\_
- \_\_\_\_\_
- \_\_\_\_\_
- \_\_\_\_\_

## V. NOTICES AND SIGNATURES

- 5.1 **COLLATERAL ATTACK ON JUDGMENT.** Any petition or motion for collateral attack on this Judgment and Sentence, including but not limited to any personal restraint petition, state habeas corpus petition, motion to vacate judgment, motion to withdraw guilty plea, motion for new trial or motion to arrest judgment, must be filed within one year of the final judgment in this matter, except as provided for in RCW 10.73.100. RCW 10.73.090.

- 5.2 **LENGTH OF SUPERVISION.** For an offense committed prior to July 1, 2000, the defendant shall remain under the court's jurisdiction and the supervision of the Department of Corrections for a period up to 10 years from the date of sentence or release from confinement, whichever is longer, to assure payment of all legal financial obligations unless the court extends the criminal judgment an additional 10 years. For an offense committed on or after July 1, 2000, the court shall retain jurisdiction over the offender, for the purpose of the offender's compliance with payment of the legal financial obligations, until the obligation is completely satisfied, regardless of the statutory maximum for the crime. RCW 9.94A.760 and RCW 9.94A.505. The clerk of the court is authorized to collect unpaid legal financial obligations at any time the offender remains under the jurisdiction of the court for purposes of his or her legal financial obligations. RCW 9.94A.760(4) and RCW 9.94A.753(4).

- 5.3 **NOTICE OF INCOME-WITHHOLDING ACTION.** If the court has not ordered an immediate notice of payroll deduction in Section 4.1, you are notified that the Department of Corrections or the clerk of the court may issue a notice of payroll deduction without notice to you if you are more than 30 days past due in monthly payments in an amount equal to or greater than the amount payable for one month. RCW 9.94A.7602. Other income-withholding action under RCW 9.94A may be taken without further notice. RCW 9.94A.760 may be taken without further notice. RCW 9.94A.7606.

- 5.4 **RESTITUTION HEARING.**

[ ] Defendant waives any right to be present at any restitution hearing (sign initials): \_\_\_\_\_

- 5.5 **CRIMINAL ENFORCEMENT AND CIVIL COLLECTION.** Any violation of this Judgment and Sentence is punishable by up to 60 days of confinement per violation. Per section 2.5 of this document, legal financial obligations are collectible by civil means. RCW 9.94A.634.

- 5.6 **FIREARMS.** You must immediately surrender any concealed pistol license and you may not own, use or possess any firearm unless your right to do so is restored by a court of record. (The court clerk shall forward a copy of the defendant's driver's license, identicard, or comparable identification to the Department of Licensing along with the date of conviction or commitment.) RCW 9.41.040, 9.41.047.

- 5.7 **SEX AND KIDNAPPING OFFENDER REGISTRATION.** RCW 9A.44.130, 10.01.200.

N/A

- 5.8 [ ] The court finds that Count \_\_\_\_\_ is a felony in the commission of which a motor vehicle was used. The clerk of the court is directed to immediately forward an Abstract of Court Record to the Department of Licensing, which must revoke the defendant's driver's license. RCW 46.20.285.

## JUDGMENT AND SENTENCE (JS)

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5.9 If the defendant is or becomes subject to court-ordered mental health or chemical dependency treatment, the defendant must notify DOC and the defendant's treatment information must be shared with DOC for the duration of the defendant's incarceration and supervision. RCW 9.94A.562.

5.10 **OTHER:** \_\_\_\_\_

DONE in Open Court and in the presence of the defendant this date: 4.15.16

JUDGE

Print name: \_\_\_\_\_

KATHERINE M. STOLZ

J. Williams  
Deputy Prosecuting Attorney

Print name: Jesse Williams

WSB # 35513

Attorney for Defendant

Print name: Edward Kelle

WSB # 23503

X Refused to Sign  
Defendant

Print name: \_\_\_\_\_

**Voting Rights Statement:** I acknowledge that I have lost my right to vote because of this felony conviction. If I am registered to vote, my voter registration will be cancelled.

My right to vote is provisionally restored as long as I am not under the authority of DOC (not serving a sentence of confinement in the custody of DOC and not subject to community custody as defined in RCW 9.94A.030). I must re-register before voting. The provisional right to vote may be revoked if I fail to comply with all the terms of my legal financial obligations or an agreement for the payment of legal financial obligations.

My right to vote may be permanently restored by one of the following for each felony conviction: a) a certificate of discharge issued by the sentencing court, RCW 9.94A.637; b) a court order issued by the sentencing court restoring the right, RCW 9.92.066; c) a final order of discharge issued by the indeterminate sentence review board, RCW 9.96.050; or d) a certificate of restoration issued by the governor, RCW 9.96.020. Voting before the right is restored is a class C felony, RCW 29A.84.660. Registering to vote before the right is restored is a class C felony, RCW 29A.84.140.

Defendant's signature: X Refused to Sign

**FILED**  
CRIMINAL DIV. 1  
IN OPEN COURT

**APR 15 2016**

CLERK COUNTY, WA

**CERTIFICATE OF CLERK**

CAUSE NUMBER of this case: 13-1-00554-1

I, KEVIN STOCK Clerk of this Court, certify that the foregoing is a full, true and correct copy of the Judgment and Sentence in the above-entitled action now on record in this office.

WITNESS my hand and seal of the said Superior Court affixed this date:

Clerk of said County and State, by: \_\_\_\_\_, Deputy Clerk

**IDENTIFICATION OF COURT REPORTER****CourtSmart**

\_\_\_\_\_  
Court Reporter

sex offense  
  X   ~~serious~~ violent offense  
  X   assault in the second degree  
  X   any crime where the defendant or an accomplice was armed with a deadly weapon.  
          any felony under 69.50 and 69.52

**The Court may also order any of the following special conditions:**

- X (I) The offender shall remain within, or outside of, a specified geographical boundary: \_\_\_\_\_  
per DOC
- X (II) The offender shall not have direct or indirect contact with the victim of the crime or a specified class of individuals: \_\_\_\_\_  
see §4.3
- \_\_\_\_\_ (III) The offender shall participate in crime-related treatment or counseling services;
- \_\_\_\_\_ (IV) The offender shall not consume alcohol; \_\_\_\_\_
- \_\_\_\_\_ (V) The residence location and living arrangements of a sex offender shall be subject to the prior approval of the department of corrections; or
- X (VI) The offender shall comply with any crime-related prohibitions.
- \_\_\_\_\_ (VII) Other: \_\_\_\_\_

## IDENTIFICATION OF DEFENDANT

SID No. WA17525427  
(If no SID take fingerprint card for State Patrol)

Date of Birth 05/23/80

FBI No. 922669JB5

Local ID No. UNKNOWN

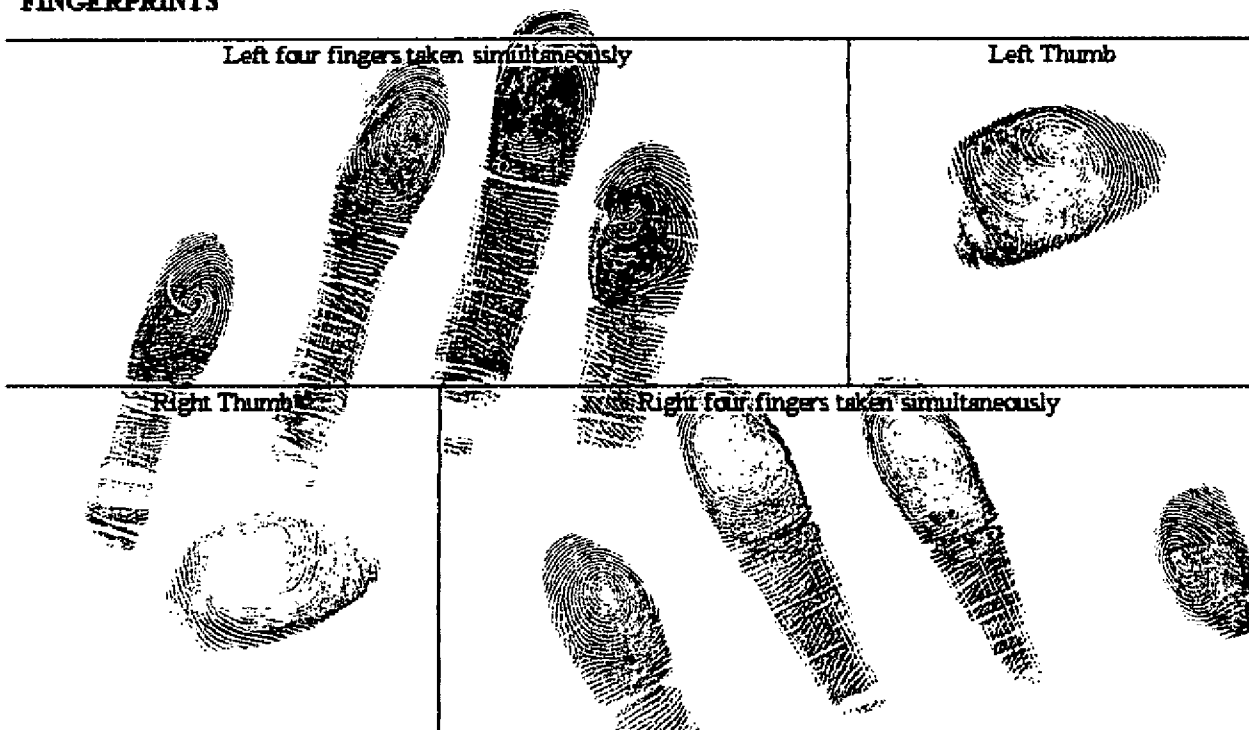
PCN No. 540911011

Other

Alias name, SSN, DOB: \_\_\_\_\_

<b>Race:</b>		<b>Ethnicity:</b>		<b>Sex:</b>	
<input checked="" type="checkbox"/> Asian/Pacific Islander	<input type="checkbox"/> Black/African- American	<input type="checkbox"/> Caucasian	<input type="checkbox"/> Hispanic	<input checked="" type="checkbox"/> Male	
<input type="checkbox"/> Native American	<input type="checkbox"/> Other: :	<input checked="" type="checkbox"/> Non- Hispanic	<input type="checkbox"/> Female		

## FINGERPRINTS



I attest that I saw the same defendant who appeared in court on this document affix his or her fingerprints and signature thereto. Clerk of the Court, Deputy Clerk, Sharon Anderson

Dated: 4/15/16

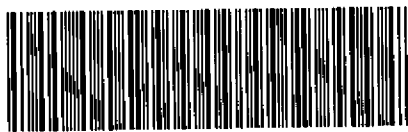
DEFENDANT'S SIGNATURE:

refuses to sign

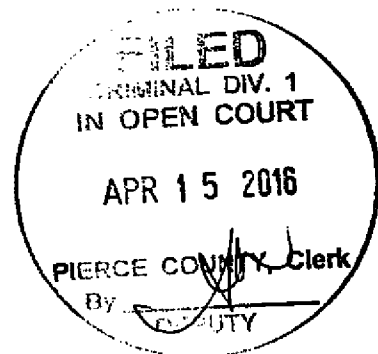
DEFENDANT'S ADDRESS:

JUDGMENT AND SENTENCE (JS)  
(Felony) (7/2007) Page 11 of 11

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Tacoma, Washington 98402-2171  
Telephone: (253) 798-7400



13-1-00554-1 46729289 JS 04-18-16



SUPERIOR COURT OF WASHINGTON FOR PIERCE COUNTY

STATE OF WASHINGTON,

Plaintiff,

CAUSE NO. 13-1-00554-1

vs.

AS TO COUNT V, VI, VII ONLY

SOPHEAP CHITH,

JUDGMENT AND SENTENCE

(Misd. and/or Gross Misd.)

Defendant

☒ Plea of Guilty

☐ Found Guilty by Jury

☐ Found Guilty by Court

SUSPENDED

DOB: 05/23/80

RACE: ASIAN/PACIFIC ISLAND

SEX: MALE

AGENCY: WA02700

INCIDENT #: 130360776

APR 18 2016

This matter coming on regularly for hearing in open court on the 15<sup>th</sup> day of April, 2016, the defendant SOPHEAP CHITH and his attorney

Desmond Kolke appearing, and the State of Washington appearing by JESSE WILLIAMS Prosecuting Attorney for Pierce County, following a plea of guilty accepted by the court on the 19<sup>th</sup> day of Nov., 2013. advised by the jury

IT IS HEREBY ORDERED, ADJUDGED AND DECREED That said Defendant is guilty of the crime(s) of RECKLESS DRIVING, Charge Code: (GGG6); DUTY IN CASE OF DAMAGE TO ATTENDED VEHICLE OR OTHER PROPERTY, Charge Code: (GGG10); DRIVING WHILE IN SUSPENDED OR REVOKED STATUS IN THE THIRD DEGREE; , Charge Code: (GGG9B), as charged in the Amended Information herein, and that he shall be punished by confinement in the Pierce County Jail for a term of not more than 364 days with 0 days suspended for Reckless Driving and Hit&Run Attended counts, 90 days w/0 days suspended for DWLS3°. Sentences on these counts to run concurrently  
( ) The State has pleaded and proved that the crime charged in Count(s) \_\_\_\_\_ involve(s) domestic violence with each other as well as felony sentences set forth in felony J&S.

( ) Said sentence shall be (suspended) on the attached conditions of (suspended) sentence and that the Defendant pay the prescribed crime victim compensation penalty assessment as per RCW 7.68.035 in the amount of \$ \_\_\_\_\_.

☒ The said Defendant is now hereby committed to the custody of the sheriff of aforesaid county to be detained.

Any period of supervision shall be tolled during any period of time the offender is in confinement for any reason.

Property may have been taken into custody in conjunction with this case. Property may be returned to the rightful owner. Any claim for return of such property must be made within 90 days. After 90 days, if you do not make a claim, property may be disposed of according to law.

Bail is hereby exonerated.

Signed this 15<sup>th</sup> day of April, 2016, in the presence of said Defendant.

KATHERINE M. STOLZ  
JUDGE

**KATHERINE M. STOLZ**

Entered Jour. No. \_\_\_\_\_ Page No. \_\_\_\_\_ Department No. \_\_\_\_\_, this \_\_\_\_\_ day of \_\_\_\_\_

I, \_\_\_\_\_, County Clerk and Clerk of the Superior Court of the State of Washington, in and for the County of Pierce, do hereby certify that the foregoing is a fully, true and correct copy of the judgment, sentence, and commitment in this cause as the name appears of record in my office.

WITNESS my hand and seal of said Superior Court this \_\_\_\_\_ day of \_\_\_\_\_,

\_\_\_\_\_  
County Clerk and Clerk of Superior Court

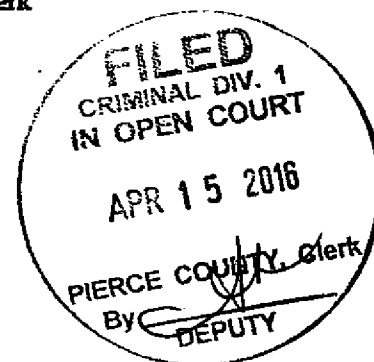
By \_\_\_\_\_  
Deputy Clerk

Presented by:

Jesse Williams  
**JESSE WILLIAMS**  
Deputy Prosecuting Attorney  
WSB # 35543

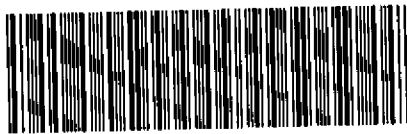
Approved as to Form:

Desmond Kolke  
Attorney for Defendant  
WSB# 23563

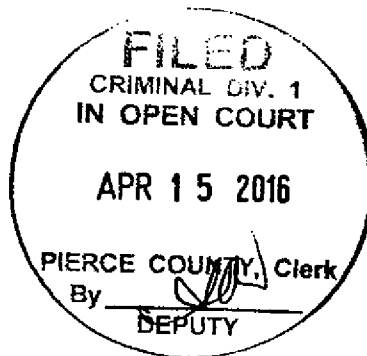


# APPENDIX B





13-1-00554-1 46729291 CPR 04-18-16



IN THE SUPERIOR COURT OF WASHINGTON, COUNTY OF PIERCE

STATE OF WASHINGTON,

Plaintiff ,

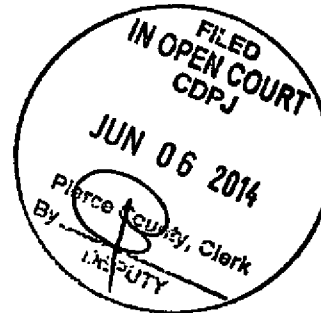
vs.

CHITH, SOPHEAP ,

Defendant .

Cause No. 13-1-00554-1

Resentencing Criminal History Documents



## SUPERIOR COURT OF WASHINGTON FOR PIERCE COUNTY

STATE OF WASHINGTON,

Plaintiff,

CAUSE NO. 13-1-00499-4

vs.

SOPHEAP CHITH

Defendant.

SID: WA17525427  
DOB: 05/23/80

## JUDGMENT AND SENTENCE (JJS)

- ☒ Prison  
☐ RCW 9A.712.0.94A.507 Prison Confinement  
☐ Jail One Year or Less  
☐ First-Time Offender  
☐ Special Sexual Offender Sentencing Alternative  
☐ Special Drug Offender Sentencing Alternative  
☐ Alternative to Confinement (ATC)  
☐ Clerk's Action Required, para 4.5 (SDOSA),  
 4.7 and 4.8 (SSOSA) 4.15.2, 5.3, 5.6 and 5.8  
☐ Juvenile Decline ☐ Mandatory ☐ Discretionary

## I. HEARING

- 1.1 A sentencing hearing was held and the defendant, the defendant's lawyer and the (deputy) prosecuting attorney were present.

## II. FINDINGS

There being no reason why judgment should not be pronounced, the court FINDS:

- 2.1 CURRENT OFFENSE(S): The defendant was found guilty on 6.6.14  
 by ☒ plea ☐ jury-verdict ☐ bench trial of:

COUNT	CRIME	RCW	ENHANCEMENT TYPE*	DATE OF CRIME	INCIDENT NO.
I	THEFT OF MOTOR VEHICLE (HHH1)	9A.56.020(1)(a) 9A.56.065	NONE	05/28/11	TPD 111481137
II	THEFT OF MOTOR VEHICLE (HHH1)	9A.56.020(1)(a) 9A.56.065	NONE	09/07/11	TPD 111481137
III	THEFT OF MOTOR VEHICLE (HHH1)	9A.56.020(1)(a) 9A.56.065	NONE	09/10/11	TPD 111481137
IV	TMVWOP 2 (HHH2)	9A.56.075(1)	NONE	01/27/12	TPD 111481137
V	THEFT OF MOTOR VEHICLE (HHH1)	9A.56.020(1)(a) 9A.56.065	NONE	02/28/12	TPD 111481137

## JUDGMENT AND SENTENCE (JS)

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 Tacoma, Washington 98402-2171  
 Telephone: (253) 798-7400

COUNT	CRIME	RCW	ENHANCEMENT TYPE*	DATE OF CRIME	INCIDENT NO.
IX	ATT THEFT OF MOTOR VEHICLE (HHH11-A)	9A.56.020(1)(a) 9A.56.065 9A.28.020	NONE	07/27/12	TPD 111481137
X	ATT THEFT OF MOTOR VEHICLE (HHH1)	9A.56.020(1)(a) 9A.56.065 9A.28.020	NONE	08/20/12	TPD 111481137
XI	ATT THEFT OF MOTOR VEHICLE (HHH1)	9A.56.020(1)(a) 9A.56.065 9A.28.020	NONE	08/25/12	TPD 111481137
XIV	THEFT OF MOTOR VEHICLE (HHH1)	9A.56.020(1)(a) 9A.56.065	NONE	02/28/12	TPD 111481137

\* (F) Firearm, (D) Other deadly weapons, (V) VUCSA in a protected zone, (VH) Veh. Horn, See RCW 46.61.520, (JP) Juvenile present, (SM) Sexual Motivation, (SCF) Sexual Conduct with a Child for a Fee. See RCW 9.94A.533(8). (If the crime is a drug offense, include the type of drug in the second column.)

as charged in the Amended Information

- [ ] Current offenses encompassing the same criminal conduct and counting as one crime in determining the offender score are (RCW 9.94A.589):
- [ ] Other current convictions listed under different cause numbers used in calculating the offender score are (list offense and cause number):

## 2.2 CRIMINAL HISTORY (RCW 9.94A.525):

	CRIME	DATE OF SENTENCE	SENTENCING COURT (County & State)	DATE OF CRIME	A or J ADULT JUV	TYPE OF CRIME
1	THEFT 2°	11/05/12	PIERCE, WA	09/25/12	A	NV
2	THEFT MV	CURRENT	PIERCE, WA	09/07/11	A	NV
3	THEFT MV	CURRENT	PIERCE, WA	09/10/11	A	NV
4	TMVWOP 2°	CURRENT	PIERCE, WA	01/27/12	A	NV
5	THEFT MV	CURRENT	PIERCE, WA	02/28/12	A	NV
6	ATT THEFT MV	CURRENT	PIERCE, WA	07/27/12	A	NV
7	ATT THEFT MV	CURRENT	PIERCE, WA	08/20/12	A	NV
8	ATT THEFT MV	CURRENT	PIERCE, WA	08/25/12	A	NV
9	THEFT MV	CURRENT	PIERCE, WA	02/28/12	A	NV

[ ] The court finds that the following prior convictions are one offense for purposes of determining the offender score (RCW 9.94A.525):

10	Assault 2° w/FASE	1-10-14	Pierce, WA	2/5/13	A
11	Drive-By Shooting				
12	UPOF 2°				
13	Felony VNCO				
14	TMVWOP 1° w/FASE				
15	Intim. Witness/FASE				

JUDGMENT AND SENTENCE (JS)  
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## 2.3 SENTENCING DATA:

COUNT NO.	OFFENDER SCORE	SERIOUSNESS LEVEL	STANDARD RANGE (not including enhancements)	PLUS ENHANCEMENTS	TOTAL STANDARD RANGE (including enhancements)	MAXIMUM TERM
I	9+	II	43-57 MONTHS	NONE	43-57 MONTHS	10YRS
II	9+	II	43-57 MONTHS	NONE	43-57 MONTHS	10YRS
III	9+	II	43-57 MONTHS	NONE	43-57 MONTHS	10YRS
IV	9+	I	22-29 MONTHS	NONE	22-29 MONTHS	5 YRS
V	9+	II	43-57 MONTHS	NONE	43-57 MONTHS	10YRS
IX	9+	II	32.25-42.75 MOS	NONE	32.25-42.75 MOS	5YRS
X	9+	II	32.25-42.75 MOS	NONE	32.25-42.75 MOS	5YRS
XI	9+	II	32.25-42.75 MOS	NONE	32.25-42.75 MOS	5YRS
XIV	9+	II	43-57 MONTHS	NONE	43-57 MONTHS	10YRS

For violent offenses, most serious offenses, or armed offenders recommended sentencing agreements or plea agreements are ☐ attached ☐ as follows: N/A

2.4 ☐ **EXCEPTIONAL SENTENCE.** Substantial and compelling reasons exist which justify an exceptional sentence:

☐ within ☐ below the standard range for Count(s) \_\_\_\_\_.

☐ above the standard range for Count(s) \_\_\_\_\_.

☐ The defendant and state stipulate that justice is best served by imposition of the exceptional sentence above the standard range and the court finds the exceptional sentence furthers and is consistent with the interests of justice and the purposes of the sentencing reform act.

☐ Aggravating factors were ☐ stipulated by the defendant, ☐ found by the court after the defendant waived jury trial, ☐ found by jury by special interrogatory.

Findings of fact and conclusions of law are attached in Appendix 2.4. ☐ Jury's special interrogatory is attached. The Prosecuting Attorney ☐ did ☐ did not recommend a similar sentence.

2.5 **ABILITY TO PAY LEGAL FINANCIAL OBLIGATIONS.** The court has considered the total amount owing, the defendant's past, present and future ability to pay legal financial obligations, including the defendant's financial resources and the likelihood that the defendant's status will change. The court finds that the defendant has the ability or likely future ability to pay the legal financial obligations imposed herein. RCW 9.94A.753.

☐ The following extraordinary circumstances exist that make restitution inappropriate (RCW 9.94A.753):

☐ The following extraordinary circumstances exist that make payment of nonmandatory legal financial obligations inappropriate:

2.6 ☐ **FELONY FIREARM OFFENDER REGISTRATION.** The defendant committed a felony firearm offense as defined in RCW 9A.1.010.

☐ The court considered the following factors:

☐ the defendant's criminal history.

☐ whether the defendant has previously been found not guilty by reason of insanity of any offense in this state or elsewhere.

☐ evidence of the defendant's propensity for violence that would likely endanger persons.

## JUDGMENT AND SENTENCE (JS)

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[ ] other: \_\_\_\_\_

[ ] The court decided the defendant [ ] should [ ] should not register as a felony firearm offender.

### III. JUDGMENT

3.1 The defendant is **GUILTY** of the Counts and Charges listed in Paragraph 2.1.

3.2 [ ] The court **DISMISSES** Counts \_\_\_\_\_ [ ] The defendant is found **NOT GUILTY** of Counts \_\_\_\_\_

### IV. SENTENCE AND ORDER

#### IT IS ORDERED:

4.1 Defendant shall pay to the Clerk of this Court: (Pierce County Clerk, 930 Tacoma Ave #110, Tacoma WA 98402)

#### JASS CODE

<b>RTNRJN</b>	\$ _____	Restitution to: _____
	\$ _____	Restitution to: _____
	(Name and Address--address may be withheld and provided confidentially to Clerk's Office).	
<b>PCV</b>	\$ <u>500.00</u>	Crime Victim assessment
<b>DNA</b>	\$ <u>100.00</u>	DNA Database Fee
<b>PUB</b>	\$ <u>500.00</u>	Court-Appointed Attorney Fees and Defense Costs
<b>FRC</b>	\$ <u>200.00</u>	Criminal Filing Fee
<b>FCM</b>	\$ _____	Fine

#### **OTHER LEGAL FINANCIAL OBLIGATIONS (specify below)**

\$ \_\_\_\_\_ Other Costs for: \_\_\_\_\_

\$ \_\_\_\_\_ Other Costs for: \_\_\_\_\_

\$ 1300.00 **TOTAL**

☒ The above total does not include all restitution which may be set by later order of the court. An agreed restitution order may be entered. RCW 9.94A.753. A restitution hearing:

☒ shall be set by the prosecutor.

[ ] is scheduled for \_\_\_\_\_

[ ] **RESTITUTION**. Order Attached

[ ] The Department of Corrections (DOC) or clerk of the court shall immediately issue a Notice of Payroll Deduction. RCW 9.94A.7602, RCW 9.94A.760(8).

☒ All payments shall be made in accordance with the policies of the clerk, commencing immediately, unless the court specifically sets forth the rate herein: Not less than \$ Per Clerk per month commencing Per Clerk. RCW 9.94.760. If the court does not set the rate herein, the defendant shall report to the clerk's office within 24 hours of the entry of the judgment and sentence to set up a payment plan.

#### **JUDGMENT AND SENTENCE (JS)**

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The defendant shall report to the clerk of the court or as directed by the clerk of the court to provide financial and other information as requested. RCW 9.94A.760(7)(b)

☐ **COSTS OF INCARCERATION.** In addition to other costs imposed herein, the court finds that the defendant has or is likely to have the means to pay the costs of incarceration, and the defendant is ordered to pay such costs at the statutory rate. RCW 10.01.160.

**COLLECTION COSTS** The defendant shall pay the costs of services to collect unpaid legal financial obligations per contract or statute. RCW 36.18.190, 9.94A.780 and 19.16.500.

**INTEREST** The financial obligations imposed in this judgment shall bear interest from the date of the judgment until payment in full, at the rate applicable to civil judgments. RCW 10.82.090

**COSTS ON APPEAL** An award of costs on appeal against the defendant may be added to the total legal financial obligations. RCW 10.73.160.

4.1b **ELECTRONIC MONITORING REIMBURSEMENT.** The defendant is ordered to reimburse \_\_\_\_\_ (name of electronic monitoring agency) at \_\_\_\_\_ for the cost of pretrial electronic monitoring in the amount of \$ \_\_\_\_\_.

4.2 ☒ **DNA TESTING.** The defendant shall have a blood/biological sample drawn for purposes of DNA identification analysis and the defendant shall fully cooperate in the testing. The appropriate agency, the county or DOC, shall be responsible for obtaining the sample prior to the defendant's release from confinement. RCW 43.43.754.

☐ **HIV TESTING.** The Health Department or designee shall test and counsel the defendant for HIV as soon as possible and the defendant shall fully cooperate in the testing. RCW 70.24.340.

4.3 **NO CONTACT**  
The defendant shall not have contact with \_\_\_\_\_ (name, DOB) including, but not limited to, personal, verbal, telephonic, written or contact through a third party for 10 years (not to exceed the maximum statutory sentence).

☐ Domestic Violence No-Contact Order, Antiharassment No-Contact Order, or Sexual Assault Protection Order is filed with this Judgment and Sentence.

4.4 **OTHER:** Property may have been taken into custody in conjunction with this case. Property may be returned to the rightful owner. Any claim for return of such property must be made within 90 days. After 90 days, if you do not make a claim, property may be disposed of according to law.


Brandon R. Lewondouski, Brittney Shanel Williams, Brett Hampton, Chanel Marlene Ogburn-Robinson, Daniel Steven Reese, Gloria George Russell, Yamarro Alexander Pak, Vibol J. Sou, Jah nisha Rosario Mc Intosh, Kyle Calvin Connell, Rigoberto H. Reyes, Julian Medina Koroma, Seth Martin Harris, Michael Russell Hagan.

4.4a ☐ All property is hereby forfeited

☐ Property may have been taken into custody in conjunction with this case. Property may be returned to the rightful owner. Any claim for return of such property must be made within 90 days. After 90 days, if you do not make a claim, property may be disposed of according to law.

4.4b **BOND IS HEREBY EXONERATED**

4.5 **CONFINEMENT OVER ONE YEAR.** The defendant is sentenced as follows:

(a) **CONFINEMENT.** RCW 9.94A.589. Defendant is sentenced to the following term of total confinement in the custody of the Department of Corrections (DOC):

<u>43</u> months on Count	<u>I, II, III, V, XIV</u>	_____ months on Count	_____
<u>29</u> months on Count	<u>IV</u>	_____ months on Count	_____
<u>42.75</u> months on Count	<u>IX, X, XI</u>	_____ months on Count	_____

Actual number of months of total confinement ordered is: 43 months

consecutive to sentence  
imposed under  
13-1-00554-1

(Add mandatory firearm, deadly weapons, and sexual motivation enhancement time to run consecutively to other counts, see Section 2.3, Sentencing Data, above).

☐ The confinement time on Count(s) \_\_\_\_\_ contain(s) a mandatory minimum term of \_\_\_\_\_.

**CONSECUTIVE/CONCURRENT SENTENCES.** RCW 9.94A.589. All counts shall be served concurrently, except for the portion of those counts for which there is a special finding of a firearm, other deadly weapon, sexual motivation, VUCSA in a protected zone, or manufacture of methamphetamine with juvenile present as set forth above at Section 2.3, and except for the following counts which shall be served consecutively: \_\_\_\_\_

The sentence herein shall run consecutively to all felony sentences in other cause numbers imposed prior to the commission of the crime(s) being sentenced. The sentence herein shall run concurrently with felony sentences in other cause numbers imposed after the commission of the crime(s) being sentenced except for the following cause numbers. RCW 9.94A.589: \_\_\_\_\_

Confinement shall commence immediately unless otherwise set forth here: \_\_\_\_\_

(c) The defendant shall receive credit for time served prior to sentencing if that confinement was solely under this cause number. RCW 9.94A.505. The time served shall be computed by the jail unless the credit for time served prior to sentencing is specifically set forth by the court: 485 days

4.6 ☐ **COMMUNITY PLACEMENT** (pre 7/1/00 offenses) is ordered as follows:

Count \_\_\_\_\_ for \_\_\_\_\_ months;

Count \_\_\_\_\_ for \_\_\_\_\_ months;

Count \_\_\_\_\_ for \_\_\_\_\_ months;

☐ **COMMUNITY CUSTODY** (To determine which offenses are eligible for or required for community custody see RCW 9.94A.701)

## (A) The defendant shall be on community custody for the longer of:

(1) the period of early release RCW 9.94A.728(1)(2); or

(2) the period imposed by the court, as follows:

Count(s) \_\_\_\_\_ 36 months for Serious Violent Offenses

Count(s) \_\_\_\_\_ 18 months for Violent Offenses

Count(s) \_\_\_\_\_ 12 months (for crimes against a person, drug offenses, or offenses involving the unlawful possession of a firearm by a street gang member or associate)

(B) While on community placement or community custody, the defendant shall: (1) report to and be available for contact with the assigned community corrections officer as directed; (2) work at DOC-approved education, employment and/or community restitution (service); (3) notify DOC of any change in defendant's address or employment; (4) not consume controlled substances except pursuant to lawfully issued prescriptions; (5) not unlawfully possess controlled substances while in community custody; (6) not own, use, or possess firearms or ammunition; (7) pay supervision fees as determined by DOC; (8) perform affirmative acts as required by DOC to confirm compliance with the orders of the court; (9) abide by any additional conditions imposed by DOC under RCW 9.94A.704 and .706 and (10) for sex offenses, submit to electronic monitoring if imposed by DOC. The defendant's residence location and living arrangements are subject to the prior approval of DOC while in community placement or community custody. Community custody for sex offenders not sentenced under RCW 9.94A.712 may be extended for up to the statutory maximum term of the sentence. Violation of community custody imposed for a sex offense may result in additional confinement.

The court orders that during the period of supervision the defendant shall:

☐ consume no alcohol.☐ have no contact with: \_\_\_\_\_☐ remain ☐ within ☐ outside of a specified geographical boundary, to wit: \_\_\_\_\_☐ not serve in any paid or volunteer capacity where he or she has control or supervision of minors under 13 years of age☐ participate in the following crime-related treatment or counseling services: \_\_\_\_\_☐ undergo an evaluation for treatment for ☐ domestic violence ☐ substance abuse☐ mental health ☐ anger management and fully comply with all recommended treatment.☐ comply with the following crime-related prohibitions: \_\_\_\_\_**JUDGMENT AND SENTENCE (JS)**

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[ ] Other conditions:

[ ] For sentences imposed under RCW 9.94A.702, other conditions, including electronic monitoring, may be imposed during community custody by the Indeterminate Sentence Review Board, or in an emergency by DOC. Emergency conditions imposed by DOC shall not remain in effect longer than seven working days.

**Court Ordered Treatment:** If any court orders mental health or chemical dependency treatment, the defendant must notify DOC and the defendant must release treatment information to DOC for the duration of incarceration and supervision. RCW 9.94A.562.

**PROVIDED:** That under no circumstances shall the total term of confinement plus the term of community custody actually served exceed the statutory maximum for each offense

4.7 [ ] **WORK ETHIC CAMP.** RCW 9.94A.690, RCW 72.09.410. The court finds that the defendant is eligible and is likely to qualify for work ethic camp and the court recommends that the defendant serve the sentence at a work ethic camp. Upon completion of work ethic camp, the defendant shall be released on community custody for any remaining time of total confinement, subject to the conditions below. Violation of the conditions of community custody may result in a return to total confinement for the balance of the defendant's remaining time of total confinement. The conditions of community custody are stated above in Section 4.6.

4.8 **OFF LIMITS ORDER** (known drug trafficker) RCW 10.66.020. The following areas are off limits to the defendant while under the supervision of the County Jail or Department of Corrections:

## V. NOTICES AND SIGNATURES

5.1 **COLLATERAL ATTACK ON JUDGMENT.** Any petition or motion for collateral attack on this Judgment and Sentence, including but not limited to any personal restraint petition, state habeas corpus petition, motion to vacate judgment, motion to withdraw guilty plea, motion for new trial or motion to arrest judgment, must be filed within one year of the final judgment in this matter, except as provided for in RCW 10.73.100. RCW 10.73.090.

5.2 **LENGTH OF SUPERVISION.** For an offense committed prior to July 1, 2000, the defendant shall remain under the court's jurisdiction and the supervision of the Department of Corrections for a period up to 10 years from the date of sentence or release from confinement, whichever is longer, to assure payment of all legal financial obligations unless the court extends the criminal judgment an additional 10 years. For an offense committed on or after July 1, 2000, the court shall retain jurisdiction over the offender, for the purpose of the offender's compliance with payment of the legal financial obligations, until the obligation is completely satisfied, regardless of the statutory maximum for the crime. RCW 9.94A.760 and RCW 9.94A.505. The clerk of the court is authorized to collect unpaid legal financial obligations at any time the offender remains under the jurisdiction of the court for purposes of his or her legal financial obligations. RCW 9.94A.760(4) and RCW 9.94A.753(4).

5.3 **NOTICE OF INCOME-WITHHOLDING ACTION.** If the court has not ordered an immediate notice of payroll deduction in Section 4.1, you are notified that the Department of Corrections or the clerk of the

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court may issue a notice of payroll deduction without notice to you if you are more than 30 days past due in monthly payments in an amount equal to or greater than the amount payable for one month. RCW 9.94A.7602. Other income-withholding action under RCW 9.94A may be taken without further notice. RCW 9.94A.760 may be taken without further notice. RCW 9.94A.7606.

5.4 **RESTITUTION HEARING.**

☒ Defendant waives any right to be present at any restitution hearing (sign initials): AA

5.5 **CRIMINAL ENFORCEMENT AND CIVIL COLLECTION.** Any violation of this Judgment and Sentence is punishable by up to 60 days of confinement per violation. Per section 2.5 of this document, legal financial obligations are collectible by civil means. RCW 9.94A.634.

5.6 **FIREARMS.** You must immediately surrender any concealed pistol license and you may not own, use or possess any firearm unless your right to do so is restored by a court of record. (The court clerk shall forward a copy of the defendant's driver's license, identicard, or comparable identification to the Department of Licensing along with the date of conviction or commitment.) RCW 9.41.040, 9.41.047.

5.7 **SEX AND KIDNAPPING OFFENDER REGISTRATION.** RCW 9A.44.130, 10.01.200.

N/A

5.8 ☐ The court finds that Court \_\_\_\_\_ is a felony in the commission of which a motor vehicle was used. The clerk of the court is directed to immediately forward an Abstract of Court Record to the Department of Licensing, which must revoke the defendant's driver's license. RCW 46.20.285.

5.9 If the defendant is or becomes subject to court-ordered mental health or chemical dependency treatment, the defendant must notify DOC and the defendant's treatment information must be shared with DOC for the duration of the defendant's incarceration and supervision. RCW 9.94A.562.

5.10 **OTHER:** \_\_\_\_\_

DONE in Open Court and in the presence of the defendant this date: 6.6.14

JUDGE

Print name

MARK E. CUTHBERTSON

Jose Willing

Deputy Prosecuting Attorney

Print name: Jose Willing

WSB # 35543

Stephen G. Johnson

Attorney for Defendant

Print name: STEPHEN G. JOHNSON

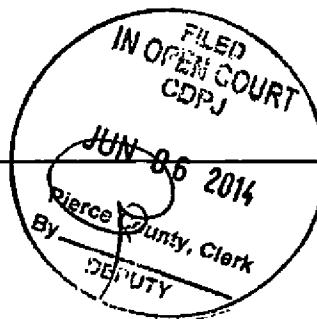
WSB # 24214

X [Signature]

Defendant

Print name: Sopheap Chith

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**VOTING RIGHTS STATEMENT:** RCW 10.64.140. I acknowledge that my right to vote has been lost due to felony convictions. If I am registered to vote, my voter registration will be cancelled. My right to vote may be restored by: a) A certificate of discharge issued by the sentencing court, RCW 9.94A.637; b) A court order issued by the sentencing court restoring the right, RCW 9.92.066; c) A final order of discharge issued by the indeterminate sentence review board, RCW 9.96.050; or d) A certificate of restoration issued by the governor, RCW 9.96.020. Voting before the right is restored is a class C felony, RCW 92A.84.660.

Defendant's signature: 

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Tacoma, Washington 98402-2171  
Telephone: (253) 798-7400

**CERTIFICATE OF CLERK**

CAUSE NUMBER of this case: 13-1-00499-4

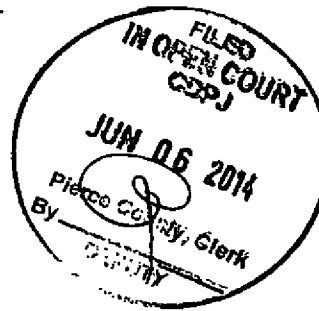
I, KEVIN STOCK Clerk of this Court, certify that the foregoing is a full, true and correct copy of the Judgment and Sentence in the above-entitled action now on record in this office.

WITNESS my hand and seal of the said Superior Court affixed this date: \_\_\_\_\_

Clerk of said County and State, by: \_\_\_\_\_, Deputy Clerk

**IDENTIFICATION OF COURT REPORTER**

Allison  
Court Reporter



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CERTIFICATE OF SERVICE

I, Marie J. Trombley, attorney for Sopheap Chith, do hereby certify under penalty of perjury under the laws of the United States and the State of Washington, that a true and correct copy of the Appellant's Opening Brief was sent by first class mail, postage prepaid, on January 9, 2017 to:

Sopheap Chith, 374950  
Stafford Creek Corrections Center  
191 Constantine Way  
Aberdeen, WA 98520

And I electronically served, by prior agreement between the parties, a true and correct copy of the Appellant's Opening Brief to Pierce County Prosecuting Attorney Michelle Hyer at [PCpatcecf@co.pierce.wa.us](mailto:PCpatcecf@co.pierce.wa.us).

*Marie Trombley*  
Marie Trombley, WSBA 41410  
P.O. Box 829  
Graham, WA 98338  
[marietrombley@comcast.net](mailto:marietrombley@comcast.net)  
253-445-7920

# TROMBLEY LAW OFFICE

**January 09, 2017 - 1:16 PM**

## Transmittal Letter

Document Uploaded: 4-489139-Appellant's Brief.pdf

Case Name: State v. Sopheap Chith

Court of Appeals Case Number: 48913-9

**Is this a Personal Restraint Petition?** Yes ☐ No

### The document being Filed is:

Designation of Clerk's Papers

Supplemental Designation of Clerk's Papers

Statement of Arrangements

Motion: \_\_\_\_\_

Answer/Reply to Motion: \_\_\_\_\_

☒ Brief: Appellant's

Statement of Additional Authorities

Cost Bill

Objection to Cost Bill

Affidavit

Letter

Copy of Verbatim Report of Proceedings - No. of Volumes: \_\_\_\_\_

Hearing Date(s): \_\_\_\_\_

Personal Restraint Petition (PRP)

Response to Personal Restraint Petition

Reply to Response to Personal Restraint Petition

Petition for Review (PRV)

Other: \_\_\_\_\_

### Comments:

No Comments were entered.

Sender Name: Marie J Trombley - Email: [marietrombley@comcast.net](mailto:marietrombley@comcast.net)

A copy of this document has been emailed to the following addresses:

PCPatcecf@co.pierce.wa.us